



Proposed Changes to Standard Real Estate Forms

Under Utah Code Annotated Section 61-2-20, the Utah Real Estate Commission (Real Estate Commission) and the Utah Attorney General (Attorney General) share responsibility for approval of standard real estate forms (State Approved Forms) used by real estate sales agents, associate brokers and principal brokers in the State of Utah. The Real Estate Commission and the Attorney General are considering changes to three of these forms. The proposed changes are attached. Text that is underlined is proposed to be added. Text that is ~~crossed out~~ is proposed to be deleted.

This memo provides a brief description of the proposed changes. The Real Estate Commission and the Attorney General are interested in receiving and considering additional public input prior to adopting the proposed changes. A public discussion on the proposed form changes is scheduled at 8:30 a.m. on June 18, 2003 in Room 205 of the Heber M. Wells Building located at 160 East 300 South in Salt Lake City, Utah, 84111. Please submit written comments by 5:00 p.m. on Monday June 2, 2003 to: Dexter Bell, Director, Utah Division of Real Estate at PO Box 146711, Salt Lake City UT 84114-6711, or via email at: dbell@utah.gov.

EXPLANATION OF PROPOSED CHANGES:

1. SECTION 1.4: SURVEY

Purpose: This section was added to the standard Real Estate Purchase Contract ("REPC") in 1998. The section also cross-references a Survey Addendum, which is also a State Approved Form. Section 1.4 was designed to allow the Buyer to make the offer of purchase conditioned upon the completion and approval of a survey.

Problem: There are some recurring problems with this section:

- A series of boxes provide options on the type of survey the Buyer may wish to obtain. One of the survey options (staking the property corners without preparing a survey map), is out-dated and inconsistent with the requirements of the Utah Code regarding surveys.
- At the time the offer to purchase is prepared the Buyer rarely knows the differ-

ences in surveys and survey costs. Also, the Buyer will often ask the Seller to share in the cost of the survey without placing any limitation on the Seller's contribution.

- Even when the Buyer makes the offer of purchase conditioned upon completion and approval of a survey, the Survey Addendum is often not attached to the REPC. Without the addendum, there is no agreement on such issues as the timing for completion and approval of the survey.

Proposal: The recommendation is to eliminate Section 1.4 and move the subject of a survey condition or "contingency" to Section 8 of the REPC.

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Section 8 of the REPC already addresses a variety of property inspection contingencies, and this is a logical place to include the survey contingency. The premise is to treat the survey contingency the same as all of the other property inspection contingencies. This means that the costs of the survey, the right to raise objections or cancel the REPC based on the survey will be the same as it is for the other *Evaluations & Inspections* in Section 8 of the REPC.

2. SECTION 2.1(C): ASSUMPTION ADDENDUM

Purpose: In this section of the REPC, the Buyer offers to assume one or more of the Seller's existing mortgage loans. If the Buyer intends to assume an existing loan, then an Assumption Addendum (also a State Approved Form) is attached to the REPC.

Problem: Loan assumptions are very rare in standard residential real estate transactions. Consequently, this portion of the REPC (including the Assumption Addendum) appears unnecessary.

Proposal: The proposal is to eliminate Section 2.1(c) and the Assumption Addendum.

3. SECTION 2.3(B): LOAN DENIAL

Purpose: Section 2.3(b) allows the Buyer and the Seller to negotiate a deadline for forfeiture of the Earnest Money Deposit in the event the Buyer is turned down for financing (a "Loan Denial"). If the Loan Denial is received before the negotiated deadline, either party can cancel, but the Buyer keeps his/her Earnest Money Deposit. By contrast, if the Loan Denial is received after the negotiated deadline, either party can cancel, but the Buyer forfeits the Earnest Money Deposit.

Problem: The negotiated deadline in this section is often overlooked. When completing the original offer, the Buyer's real estate agent fills in a hard date in this Section 2.3(b). That hard date is the deadline for forfeiture of the Earnest Money Deposit in the event of Loan Denial.

Since all of the other contract deadlines are located in Section 24, this particular deadline could be missed and the Buyer may, in the event of a Loan Denial, unintentionally forfeit the Earnest Money Deposit.

Proposal: The proposal is to move the location of this deadline from Section 2.3(b) to Section 24, where all the other deadlines in the REPC are located. Using this approach, there is considerably less likelihood that the deadline will be unintentionally overlooked.

4. SECTION 2.4: APPRAISAL

Purpose: Section 2.4 allows the Buyer to make the offer conditioned upon the property appraising for not less than the purchase price. If the appraisal comes in at less than the agreed upon purchase price, the Buyer may cancel the contract.

Problem: There is no deadline for the appraisal. This is the only pre-printed condition of purchase that does not have a deadline associated with it. As presently drafted, the appraisal can come in the day before settlement, and the Buyer may still cancel the contract. The lack of a deadline for the appraisal condition makes this provision lopsided in favor of the Buyer.

Proposal: The proposal is to create an "appraisal deadline" and to place that deadline in Section 24, where all the other deadlines are located. Using this approach, the appraisal condition will be more even-handed for the Buyer and the Seller. It is acknowledged that in making the appraisal contingency more even-handed, the proposed change is not without risk to the Buyer. It is recognized that the Buyer has no actual control over the timing for completion of the appraisal. However, the same observation can be made about other deadlines in Section 24 of the REPC.

The Seller Disclosure Deadline requires the Seller to deliver a Commitment for Title Insurance to the Buyer by a specified date. The Seller is at risk because the Seller has no actual control over the timing for completion of the

Title Commitment. Similarly, the same observations can be made regarding the Evaluations & Inspections Deadline, the Loan Denial Deadline and the Settlement Deadline. Each of those deadlines involves the performance by third parties such as mortgage loan underwriters, property inspectors and escrow officers. In all such instances, the risk is recognized and the rationale has been to control the risk by permitting the Buyer and the Seller to negotiate deadlines that they feel are realistic. That same rationale would apply to the appraisal deadline.

5. SECTION 6: TITLE INSURANCE

- Purpose:** In this section, the Seller agrees to provide the Buyer with a *standard-coverage* owner's policy of title insurance.
- Problem:** There are a number of title insurance policies and endorsements that provide a wide variety of coverage. The concern is that very few Buyers are aware that additional title insurance coverage is available.
- Proposal:** Add additional language to this section advising the Buyer that additional title insurance coverage may be available at the Buyer's expense.

6. SECTION 7(a): SELLER PROPERTY CONDITION DISCLOSURE

- Purpose:** This section of the REPC requires the Seller to provide the Buyer with a property condition disclosure. *There is no State Approved Form for property disclosure.*
- Problem:** The Seller will typically fill out a property condition disclosure form at the time of listing the property. In many instances the property is on the market for several months before an offer is accepted. When the offer has been accepted, the Seller will deliver to the Buyer a seller property condition disclosure as part of the Seller's obligations under section 7 of the REPC. Unfortunately, the Seller often forgets to make sure that the property condition disclosure is current when it is delivered to the Buyer. Problems could have developed at the property subsequent to the time the Seller originally filled out the property condition disclosure form.
- Proposal:** The recommendation is to require the property condition disclosure to be current *as of the date of Acceptance of the contract by the Buyer and the Seller.*

7. SECTION 8: SURVEY CONDITION

Based upon the discussion in paragraph 1 above (regarding the Survey), the proposal is to allow the Buyer to make the offer conditioned upon the completion and approval of a survey. That provision is now referenced in the third sequence of boxes in Section 8.

8. SECTION 8.4: BUYER'S OBJECTIONS

- Purpose:** In this section, the Buyer has the opportunity to provide the Seller with
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Utah Real Estate News

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written objections to the condition of the property. The list of objections may range from peeling paint on the garage, to a non-functioning furnace. The present language also gives the Seller the option to agree, or alternatively, not agree to make the requested repairs.

Problem: There is a potential conflict between the wording in section 8.4 and the warranty in section 10.2. As an example, assume that as a result of the property inspection the Buyer is advised that the furnace is faulty and needs repair. The Buyer then requests the Seller to repair the furnace. The conflict is as follows. Under 10.2, the Seller *"warrants that ON THE DATE SELLER DELIVERS PHYSICAL POSSESSION TO BUYER: (b) the heating [system and fixtures] will be in working order and fit for their intended purpose."*

By contrast, under Section 8.4, the REPC states that *"Seller may, but shall not be required to, resolve Buyer's objections"*.

The Seller who is unwilling to repair the furnace justifies his/her position by pointing to the language in Section 8.4. The Buyer, who insists on the furnace repairs, justifies his/her position by pointing to the warranty language in Section 10.2.

Proposal: The proposal is to add additional language to section 8.4 to clarify that, to the extent there is conflict between section 8.4 and 10.2, section 10.2 will control.

9. SECTION 9: SURVEY ADDENDUM & ASSUMPTION ADDENDUM

Based upon the above discussions, the proposal is to eliminate the Survey Addendum and the Assumption Addendum from this Section of the REPC.

10. SECTION 10.1: INSTALLMENT CONTRACTS

Purpose: This section describes the condition of the title that the Seller will deliver to the Buyer at Closing.

Problem: The problem is the present out-dated language

that reads as follows:

"...unless the sale is being made pursuant to a real estate contract which provides for title to pass at a later date. In that case, title will be conveyed in accordance with the provisions of that contract..."

The above language refers to a transaction in which the Buyer and the Seller will use an installment sales contract, which requires the deed to be delivered to the Buyer only after the sales price has been paid in full. That approach to real estate transactions is rarely used. In view of the relative infrequency of such transactions, the language is unnecessary.

Proposal: The proposal is to eliminate the outdated language.

11. SECTION 15: DISPUTE RESOLUTION

Purpose: This section allows the Buyer and the Seller to decide whether any disputes arising out of the contract will first be mediated, before any further legal action is taken.

Problem: There is some level of confusion among real estate agents, Buyers and Sellers over the meaning of the two present boxes "[] Shall vs. [] May". Too many are uncertain as to whether they are, in fact, obligated to mediate.

Proposal: The proposal is to add the clarification language shown on the attached redline version of the REPC.

12. SECTION 24: CONTRACT DEADLINES

Purpose: This section of the REPC contains all of the contract deadlines that the Buyer and the Seller initially agree to when negotiating the purchase and sale of the property.

Problem: When completing the original offer, the Buyer's real estate agent writes in hard dates for the respective contract deadlines. The problem occurs when it takes several days or weeks to negotiate the contract. By the time the Buyer

and the Seller reach an agreement, the contract deadlines initially written into Section 24, may no longer fit the transaction. If those deadlines are not updated, the Buyer and/or the Seller may unintentionally be in default under the REPC.

Proposal: The proposal is to add language to the Blank Addendum form that will require the subject of contract deadlines to be dealt with every time an addendum is prepared.

BLANK ADDENDUM

See the discussion above regarding changes to Section 24 of the REPC.

FHA/VA ADDENDUM

SECTION 2: THIRTY DAYS & INSPECTION VS. APPRAISAL

Purpose: This section addresses two issues:

- A. The right of the Buyer to cancel the REPC based on a Loan Denial; and
- B. The subject of FHA or VA appraisals of the property.

Problem: Unlike the standard form REPC, this Addendum (as presently drafted) states that regardless of the Loan Denial Deadline negotiated by the Buyer and the Seller, in the event of a Loan Denial, the Buyer cannot lose the Earnest Money Deposit any earlier than thirty calendar days after Acceptance. The first problem is that FHA has no present regulation that requires a thirty-day limitation on forfeiture of Earnest Money Deposits. The present language contained in the FHA/VA Addendum regarding the thirty-day protection period is only a recommendation of FHA.

In reference to FHA appraisals, Buyers often think that an FHA appraisal is an inspection of the property. FHA appraisals often require certain repairs in order for the property to appraise at a specific price. Due to the fact that the appraisal requires repairs, Buyers are

often of the impression that an FHA appraisal is an *inspection* of the property. That is not the case. It is important to continue to encourage Buyers to have a separate inspection of the condition of the Property.

Proposal: By eliminating the thirty-day language at the front of Section 2, there will no longer be the impression that FHA/VA *requires* a thirty-day period, because they do not. Also, by adding the language at the end of section 2, Buyers should be placed on notice that the *appraisal* is not a substitute for an *inspection* of the Property.

SECTION 5: PERMITTED FEES

Purpose: Section 5 of this Addendum allows the Buyer and the Seller to agree upon a dollar amount, if any, that the Seller will contribute toward the Buyer's mortgage loan costs.

Problem: The present language in Section 5 is not sufficiently clear on the issue of the Seller's contribution toward the Buyer's loan costs. There are certain categories of closing costs that the FHA and/or the VA will not permit the Buyer to pay. Since the VA or FHA will not permit the Buyer to pay certain costs, the Seller is often, unexpectedly, placed in the position at settlement of having to pay these costs in order for the transaction to close. There is no reason this critical issue should be a last minute conflict at settlement. The issue of the Seller's contribution toward Buyer's loan costs, if any, should be negotiated at the time the Buyer and Seller first enter into the purchase contract – not at the time of settlement.

Proposal: By re-wording Section 5 (as shown on the attached form), it is anticipated that any potential confusion will be eliminated.



Don't forget the public discussion on these changes June 18, 2003 at 8:30 a.m. in Room 205 of the Heber M. Wells Building (160 E 300 South, SLC). Or submit your written comments by 5:00 p.m. on June 2, 2003 to Dexter Bell at the Division.

Below are the proposed changes to the REPC. To save space, it doesn't show the whole REPC, but shows proposed changes only, with enough text around each change to show where it fits in the REPC. Text being taken out is in ~~strikethrough~~. Text being added is underlined.

REAL ESTATE PURCHASE CONTRACT

1. PROPERTY:

1.4 Survey. (Check applicable boxes): A survey ☐ ~~WILL~~ ☐ ~~WILL NOT~~ be prepared by a licensed surveyor. The Survey Work will be: ☐ Property corners staked ☐ Boundary Survey ☐ Boundary & Improvements survey ☐ Other (specify) _____. Responsibility for payment: ☐ Buyer ☐ Seller ☐ Buyer and Seller share equally. Buyer's obligation to purchase under this Contract ☐ ~~IS~~ ☐ ~~IS NOT~~ conditioned upon Buyer's approval of the Survey Work. If yes, the terms of the attached Survey Addendum apply.

2. PURCHASE PRICE. The Purchase Price for the Property is \$ _____

2.1 Method of Payment. The Purchase Price will be paid as follows:

\$ _____ ~~(c) Loan Assumption Addendum~~ (See attached Assumption Addendum if applicable)

2.3 Application for Loan.

(b) Procedure if Loan Application is denied. If Buyer receives written notice from the Lender that the Lender does not approve the Loan (a "Notice of Loan Denial"), Buyer shall, no later than three calendar days thereafter, provide a copy to Seller. Buyer or Seller may, within three calendar days after Seller's receipt of such notice, cancel this Contract by providing written notice to the other party. In the event of a cancellation under this Section 2.3(b): (i) if the Notice of Loan Denial was received by Buyer on or before the _____ day of _____, no later than the Loan Denial Deadline referenced in Section 24(d), the Earnest Money Deposit shall be returned to Buyer; (ii) if the Notice of Loan Denial was received by Buyer after that date, Buyer agrees to forfeit, the Earnest Money Deposit shall be released to Seller, and Seller agrees to accept as Seller's exclusive remedy, the Earnest Money Deposit as liquidated damages.

2.4 Appraisal of Property: Condition. Buyer's obligation to purchase the Property ☐ ~~IS~~ ☐ ~~IS NOT~~ conditioned upon the Property appraising for not less than the Purchase Price. This condition is referred to as the "Appraisal Condition". If the Appraisal Condition applies and the Buyer receives written notice from the Lender that the Property has appraised for less than the Purchase Price (a "Notice of Appraised Value"), Property appraises for less than the Purchase Price, Buyer may cancel this Contract by providing written notice to Seller no later than three days after Buyer's receipt of such written notice of the appraised value. In the event of such a cancellation under this Section 2.4: (i) if the Notice of Appraised Value was received by Buyer no later than the Appraisal Deadline referenced in Section 24(e), the Earnest Money Deposit shall be released returned to Buyer; (ii) if the Notice of Appraised Value was received by Buyer after that date, the Earnest Money Deposit shall be released to Seller, and Seller agrees to accept as Seller's exclusive remedy, the Earnest Money Deposit as liquidated damages. A failure to cancel as provided in this Section 2.4 shall be deemed a waiver of the Appraisal Condition by Buyer. Cancellation pursuant to the provisions of any other section of this Contract shall be governed by such other provisions.

3. SETTLEMENT AND CLOSING.

Settlement shall take place on the Settlement Deadline referenced in Section 24(f), ... Prorations set forth in this Section shall be made as of the Settlement Deadline date referenced in Section 24(f), ...

The transaction will be considered "closed" when Settlement has been completed, and when **all** of the following have been completed:

6. TITLE INSURANCE. At Settlement, Seller agrees to pay for a standard-coverage owner's policy of title insurance insuring Buyer in the amount of the Purchase Price. Any additional title insurance coverage shall be at Buyer's expense.

7. SELLER DISCLOSURES. No later than the Seller Disclosure Deadline referenced in Section 24(b), Seller shall provide to Buyer the following documents which are collectively referred to as the "Seller Disclosures":

(a) a Seller property condition disclosure for the Property, current as of the date of Acceptance of this offer by all parties (as defined in Section 23), signed and dated by Seller; . . .

8. BUYER'S RIGHT TO CANCEL BASED ON EVALUATIONS AND INSPECTIONS. Buyer's obligation to purchase under this Contract (check applicable boxes):

☐ ~~IS~~ ☐ ~~IS NOT~~ conditioned upon Buyer's approval of the content of all the Seller Disclosures referenced in Section 7;

☐ ~~IS~~ ☐ ~~IS NOT~~ conditioned upon Buyer's approval of a physical condition inspection of the Property;

REAL ESTATE PURCHASE CONTRACT, cont'd

☐ **IS** ☐ **IS NOT** conditioned upon Buyer's approval of a survey of the Property by a licensed surveyor ("Survey");
☐ **IS** ☐ **IS NOT** conditioned upon Buyer's approval of the following tests and evaluations of the Property: (specify)

8.4 Response by Seller. If Buyer provides written objections to Seller, Buyer and Seller shall have seven calendar days after Seller's receipt of Buyer's objections (the "Response Period") in which to agree in writing upon the manner of resolving Buyer's objections. Except as provided in Section 10.2, Seller may, but shall not be required to, resolve Buyer's objections...

9. ADDITIONAL TERMS. There ☐ **ARE** ☐ **ARE NOT** addenda to this Contract containing additional terms. If there are, the terms of the following addenda are incorporated into this Contract by this reference: ☐ **Addendum No.** _____
☒ **Survey Addendum** ☐ **Seller Financing Addendum** ☐ **FHA/VA Loan Addendum** ☒ **Assumption Addendum**

10. SELLER WARRANTIES & REPRESENTATIONS.

10.1 Condition of Title. Seller represents that Seller has fee title to the Property and will convey good and marketable title to Buyer at Closing by general warranty deed ~~unless the sale is being made pursuant to a real estate contract which provides for title to pass at a later date. In that case, title will be conveyed in accordance with the provisions of that contract.~~ . . . Except for any loan(s) specifically assumed by Buyer under Section 2.1(c), Seller will cause to be paid off by Closing all mortgages, trust deeds, judgments, mechanic's liens, tax liens and warrants.

15. DISPUTE RESOLUTION. The parties agree that any dispute, arising prior to or after Closing, related to this Contract ☐ **SHALL** ☐ **MAY AT THE OPTION OF THE PARTIES** ~~(upon mutual agreement of the parties)~~ first be submitted to mediation. If the parties agree to mediation, the dispute shall be submitted to mediation through a mediation provider mutually agreed upon by the parties.

21. TIME IS OF THE ESSENCE. Time is of the essence regarding the dates set forth in this Contract. Extensions must be agreed to in writing by all parties. Unless otherwise explicitly stated in this Contract: (a) performance under each Section of this Contract which references a date shall absolutely be required by 5:00 PM Mountain Time on the stated date; and (b) the term "days" shall mean calendar days and shall be counted beginning on the day following the event which triggers the timing requirement (i.e., Acceptance, Notice of Loan Denial, ~~receipt of the Seller Disclosures~~, etc.). Performance dates and times referenced herein shall not be binding upon title companies, lenders, appraisers and others not parties to this Contract, except as otherwise agreed to in writing by such non-party.

24. CONTRACT DEADLINES. Buyer and Seller agree that the following deadlines shall apply to this Contract:

(a) Application Deadline	_____	(Date)
(b) Seller Disclosure Deadline	_____	(Date)
(c) Evaluations & Inspections Deadline	_____	(Date)
(d) Loan Denial Deadline	_____	(Date)
(e) Appraisal Deadline	_____	(Date)
(f) Settlement Deadline	_____	(Date)

(Buyer's Signature)	(Offer Date)	(Buyer's Signature)	(Offer Date)
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(Buyers' Names) (PLEASE PRINT)	(Notice Address)	(Zip Code)	(Phone)
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ACCEPTANCE/COUNTEROFFER/REJECTION

(Sellers' Names) (PLEASE PRINT)	(Notice Address)	(Zip Code)	(Phone)
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Because this blank addendum and the FHA/VA addendum are short, the entire form is shown, with proposed changes.

ADDENDUM NO. _____
TO
REAL ESTATE PURCHASE CONTRACT

THIS IS AN ☐ **ADDENDUM** ☐ **COUNTEROFFER** to that REAL ESTATE PURCHASE CONTRACT (the "REPC") with an Offer Reference Date of _____, including all prior addenda and counteroffers, between _____ as Buyer, and _____ as Seller, regarding the Property located at _____. The following terms are hereby incorporated as part of the REPC:

BUYER AND SELLER AGREE THAT THE CONTRACT DEADLINES REFERENCED IN SECTION 24 OF THE REPC (CHECK APPLICABLE BOX): ☐ **REMAIN UNCHANGED** ☐ **ARE CHANGED AS FOLLOWS:** _____

To the extent the terms of this ADDENDUM modify or conflict with any provisions of the REPC, including all prior addenda and counteroffers, these terms shall control. All other terms of the REPC, including all prior addenda and counteroffers, not modified by this ADDENDUM shall remain the same. ☐ **Seller** ☐ **Buyer** shall have until _____ ☐ **AM** ☐ **PM** Mountain Time on _____ (Date), to accept the terms of this ADDENDUM in accordance with the provisions of Section 23 of the REPC. Unless so accepted, the offer as set forth in this ADDENDUM shall lapse.

☐ Buyer ☐ Seller Signature (Date) (Time) ☐ Buyer ☐ Seller Signature (Date) (Time)

ACCEPTANCE/COUNTEROFFER/REJECTION

CHECK ONE:

☐ **ACCEPTANCE:** ☐ **Seller** ☐ **Buyer** hereby accepts the terms of this ADDENDUM.

☐ **COUNTEROFFER:** ☐ **Seller** ☐ **Buyer** presents as a counteroffer the terms of attached ADDENDUM NO. ____.

(Signature) (Date) (Time) (Signature) (Date) (Time)

☐ **REJECTION:** ☐ **Seller** ☐ **Buyer** rejects the foregoing ADDENDUM.

(Signature) (Date) (Time) (Signature) (Date) (Time)

**FHA/VA LOAN ADDENDUM
TO
REAL ESTATE PURCHASE CONTRACT**

THIS IS AN ADDENDUM to that REAL ESTATE PURCHASE CONTRACT (the "REPC" with an Offer Reference Date of _____, 1920 _____, including all prior addenda and counteroffers, between _____ as Buyer, and _____ as Seller, regarding the Property located at _____.

The following terms are hereby incorporated as part of the REPC. All references to FHA/VA shall mean the Federal Housing Administration/Department of Veterans Affairs. **(CHECK APPLICABLE BOXES)**

1. Buyer ☐ **DOES** ☐ **DOES NOT** intend to occupy the Property as his/her residence.
2. ~~Section 2.3(b) of the REPC establishes a procedure by which Buyer or Seller may cancel the Contract and the Earnest Money Deposit shall be returned to Buyer, if the Buyer has received a Loan Denial on or before a certain date specified in that section. That date shall not be fewer than thirty calendar days after Acceptance. Furthermore, Buyer shall not be obligated to complete the purchase of the Property or incur any penalty or forfeiture of the Earnest Money Deposit or other down payment, or otherwise be obligated to purchase the Property, if: (a) for a VA loan, the Purchase Price exceeds the reasonable value of the Property established by the VA Certificate of Reasonable Value or VA appraisal; or (b) for an FHA loan, the Purchase Price exceeds the appraised value of the Property (excluding closing costs) established by the FHA appraisal. Buyer shall, however, have the right to complete the sale without regard to the amount of the appraised valuation made by the applicable FHA or the VA. The appraised valuation is used to determine the maximum loan that FHA will insure or VA will guarantee. Neither FHA nor the VA warrants the value or condition of the Property. Buyer should satisfy himself/herself that the price and condition of the Property are acceptable. Buyer acknowledges that an FHA/VA appraisal does not constitute a property inspection.~~
3. Seller shall make any and all appraisal required repairs, provided that the cost does not exceed \$_____.
4. If required by applicable FHA or VA rules, Seller shall furnish Buyer with a current Pest Control Report showing the Property to be free and clear from termite infestation. In the event of termite infestation, Seller shall eradicate the same and repair any damage at Seller's expense, provided that the cost does not exceed \$_____.
5. ~~Seller ☐ **SHALL** ☐ **SHALL NOT** contribute at settlement an amount toward payment of loan discount points and other loan and closing related costs, to be allocated at Buyer's discretion. If there is to be such a contribution, the amount shall not exceed \$_____ in the aggregate. If this amount is more than the actual total amount of these costs, then Seller shall pay no more than that actual amount. If this amount is not enough to pay these costs in full, then it shall be applied among these costs as determined by Buyer.~~
5. There are certain costs associated with the granting of a mortgage loan, some of which FHA/VA will not allow the Buyer to pay. (Check applicable box)

5.1 ☐ Seller shall contribute at settlement an amount toward payment of loan discount points and other loan and closing related costs ("Loan Costs"). The amount of Seller's contribution shall be \$_____. Such contribution shall first be applied to Loan Costs that FHA/VA will not permit Buyer to pay, and any remainder shall be allocated at Buyer's discretion toward remaining Loan Costs. Seller shall have no further obligation toward Loan Costs. If the amount of Seller's contribution exceeds the amount of actual Loan Costs, then the excess shall be returned to Seller.

FHA/VA LOAN ADDENDUM, cont'd

5.2 ☐ Seller shall not contribute any amount toward Loan Costs.

6. [APPLIES TO FHA ONLY] The undersigned hereby certify that the terms of the REPC are true to the best of our knowledge and belief, and that any other agreement entered into by any of the parties has been fully disclosed and is attached to the REPC.

7. If any provision in the REPC or this ADDENDUM is inconsistent with any currently applicable law governing FHA/VA loan transactions, then to the extent of such inconsistency, that law shall govern.

To the extent the terms of this ADDENDUM modify or conflict with any provisions of the REPC, including all prior addenda and counteroffers, these terms shall control. All other terms of the REPC, including all prior addenda and counteroffers, not modified by this ADDENDUM shall remain the same. ☐ Seller ☐ Buyer shall have until _____ ☐ AM ☐ PM Mountain Time _____ (Date), to accept the terms of this FHA/VA LOAN ADDENDUM in accordance with the provisions of Section 23 of the REPC. Unless so accepted, the offer as set forth in FHA/VA LOAN ADDENDUM shall lapse.

☐ Buyer ☐ Seller Signature Date Time ☐ Buyer ☐ Seller Signature Date Time

ACCEPTANCE/COUNTEROFFER/REJECTION

CHECK ONE:

☐ **ACCEPTANCE:** ☐ Seller ☐ Buyer hereby accepts the terms of this FHA/VA LOAN ADDENDUM.

☐ **COUNTEROFFER:** ☐ Seller ☐ Buyer presents as a counteroffer the terms of attached ADDENDUM NO. ____.

 (Signature) (Date) (Time) (Signature) (Date) (Time)

☐ **REJECTION:** ☐ Seller ☐ Buyer rejects the foregoing FHA/VA LOAN ADDENDUM.

 (Signature) (Date) (Time) (Signature) (Date) (Time)

Continuing Education Requirements Recently Modified

Last fall, distance education rules for continuing education went into effect. The Division of Real Estate and the Real Estate Commission immediately began receiving a number of calls expressing concern about the difficulty in receiving continuing education credits for courses under the distance education policies. Some thought the new rules didn't expand the availability and convenience of CE course offerings enough.

As a result, the Division and the Commission assessed the rules dealing with distance education and CE. Responding to your concerns, changes have now been made to provide greater flexibility in this area.

There are now two different categories of continuing education:

1. LIVE:

In-class instruction, *or* ARELLO approved DISTANCE EDUCATION, *with* Division approved content, *OR* Division approved videotapes, computer based training, etc., viewed in a school or Board of Realtor's office, with a pre-licensing instructor present.

OR

2. PASSIVE:

Videotapes, or any other media or computer course, with Division approved content, viewed in a location without a pre-licensing instructor present.

The current distance education policy now allows real estate licensees to take up to **one half** of their CE on videotape without a Pre-license instructor available (that is **six hours per each two year license term**). This includes the three hour Core Course (when viewed outside of a school). The other half must be taken **live**.

Remember, there is no limit on the CE hours that can be live education. All 12 hours may be **live**. The maximum hours that can be **passive** are limited to one half the total CE requirement – 6 hours.

Education providers must make an individual determination for each student whether the CE they provide is **live** or **passive**.

If a school sends out videotapes, etc., the school is responsible to ensure that by some reasonable criteria the licensee actually viewed the tapes. A brief quiz would be a reasonable form of validation. The certificates issued in this instance must indicate **passive**.

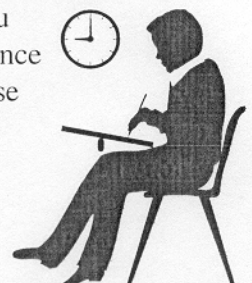
A videotape can be **live** if the tape was viewed in the presence of, or in close proximity to (on the premises) a pre-license instructor. If not, it is **passive**. The school shall determine which category it is, and state it on the CE completion certificate.

As a licensee, it is *your* responsibility to make sure you do not have **more than one half** the required 12 hours of CE in **passive** courses. If you do, it will delay the renewal of your license while you acquire enough **live** education to comply with the policy.

All continuing education certificates issued since February of this year must indicate whether a course is **live** or **passive**. CE courses taken prior to February of 2003, and during your two year license term, will be considered live education. Make certain you monitor your certificates to be sure that you do not exceed 6 hours of **passive** CE in any renewal term. **Passive** CE hours exceeding six will NOT BE HONORED when you renew your license. Overall, these changes provide greater flexibility for licensees to complete their continuing education requirement.

The Division web site provides information on continuing education and distance education course providers. The Internet address is www.commerce.utah.gov/dre.

From there, select "education" and you can access the approved CE and distance education providers course lists. Please review this information to assist you in preparing to take your continuing education.



Real Estate Disciplinary Sanctions



ADAMSON, ALLEN M., Sales Agent, Re/Max Results LLC, American Fork. Agreed to pay a \$500 fine and complete

a real estate ethics class for breaching a fiduciary duty in a real estate transaction. After a dispute with his previous principal broker, Mr. Adamson feared that he would not be paid commissions on two pending transactions and therefore filed "Notices of Interest" on the two properties. Mr. Adamson maintains that in mitigation when his attorney told him he should not have filed the notices, he immediately released them. #RE99-02-25.

COON, TERRY V., Principal Broker, Rocking "T" Properties, West Jordan. Agreed to pay a \$500 fine and complete the Division of Real Estate Trust Account Seminar for breaching a fiduciary duty to a principal in a transaction. Instead of using the Secondary ("Backup") Contract clause from the Standard Supplementary Clauses, Mr. Coon wrote an ambiguous provision. The dispute that developed over the provision subjected Mr. Coon's clients, the sellers, to various claims from the backup buyers. #RE01-06-19.

DAY, MARLYN "RANDY", Principal Broker, Anasazai Realty, Moab. Agreed to pay a \$1,000 fine and complete the Division of Real Estate Trust Account Seminar because of receiving commission directly from a principal in a transaction instead of from his broker. Mr. Day maintains that in mitigation the transaction had been 'pending' at the time he agreed to merge his former brokerage, Canyon Country Realty, with Moab Realty and to become an associate broker with Moab Realty. #RE97-12-12.

DEGRAFF, CLARA J., Principal Broker, D.J. Realty, Mapleton, Utah. Agreed that her license would be on probationary status until her 2005 renewal and that during the probationary period, she will not have any licensees affiliated with her bro-

kerage for failing to exercise reasonable supervision over a property management company for which she was the principal broker. #RE97-01-13.

GERHARDT, JOHN R., Sales Agent, Realty Executives of Utah, Salt Lake City. Consented to pay an \$1,800 fine and complete the Division of Real Estate Trust Account Seminar based on violation of Rule 162-4.2.1, which requires a sales agent to deliver all earnest money to his principal broker upon acceptance of the offer by the seller. Mr. Gerhardt did not turn earnest money in to his broker on three different Real Estate Purchase Contracts that he filled out. #RE02-011-15.

GIBBONS, LAUNA, Coldwell Banker Residential Brokerage, Salt Lake City. Agreed to pay a \$4,000 fine and complete the Division Trust Account Seminar and courses in real estate ethics and real estate financing for violating Rule R162-6.1.1, which prohibits devices that do not reflect the true terms of a transaction. In 1997, Ms. Gibbons rewrote an offer to increase the sales price with an excess seller carryback that could be partially forgiven after closing. Ms. Gibbons maintains that in mitigation this was the first time she had heard about structuring a transaction in this fashion and that she was assured by a lender representative whom she believed to be the underwriter that the transaction was acceptable as rewritten. #RE98-06-27.

GLEDHILL, ROBERT B., Sales Agent, Prudential Utah Real Estate, Orem. License renewed on probation because Mr. Gledhill was fined by the Division of Occupational and Professional Licensing for acting as a general contractor without a license in the building of two homes.

HANSEN, ARLES, Associate Broker, Real Estate Connection, LLC, Midvale. Renewal denied because of breaching his fiduciary duty to principals, misrepresenting material facts to clients, violating

agency duties, failing to obtain informed consent to limited agency, concealing pertinent facts in transactions, and a finding in a civil court case that he had committed fraudulent inducement. At the time of publication, Mr. Hansen had requested agency review and had obtained a stay of the order, allowing him to practice pending the outcome of the agency review.

HARVEY, BRENT F., Sales Agent, Springville. License issued on probation until first renewal because of a past misdemeanor conviction. Mr. Harvey will be required to notify any principal broker with whom he licenses during the probationary period about the past conviction.

HASLEM, GARTH, Certified Real Estate Instructor, Highland, Utah. Agreed to pay a \$200 fine and have his instructor certification placed on probation for six months. In November, 2002 Mr. Haslam taught and gave continuing education credit for a course that had expired on September 30, 2002. Mr. Haslem maintains that he erroneously believed the course expiration date was the same as his instructor certification, which was valid until December 31, 2002. #RE03-01-26.

HONEY, GEORGE B., Sales Agent, Salt Lake City. Expired license reinstated on inactive status, but then immediately suspended as of July 18, 2002 because of misrepresentation to the Division on license applications. His license remained suspended until he was released from criminal probation. As of September 19, 2002, his license was activated on probation and will be on probationary status for the balance of the renewal period.

HUNT, MARA L., Inactive Sales Agent, Cedar City. License revoked by default effective November 20, 2002 after the Division filed a Petition alleging that she had misrepresented information on her application for a license and that she had been

convicted of a criminal offense involving moral turpitude. Ms. Hunt was convicted in Case 981500772 in Fifth District Court in St. George of two counts of Third Degree Felony Forgery. #RE 20-11-08.

MACEY, MARTIN W., Inactive Sales Agent, Sandy. Application for renewal denied effective July 18, 2002, based on the denial of his application for renewal of Instructor Certification, failure to provide a home street address to the Division, and failure to respond to the Division's investigation of a complaint alleging dishonesty, fraud, or incompetence in two real estate transactions.

MARTIN, BRUCE O., Broker, formerly with At Home Realty Network, Orem. License surrendered effective August 21, 2002 in lieu of continuing to respond to the Division's investigation into his criminal conviction. Mr. Martin was sentenced on a second degree felony in Case 011404138 in 4th District Court in Provo on July 10, 2002. #RE 02-07-18

MAYNARD, RAYMOND J., Sales Agent, Riverton. Initial license application granted on probation because of the revocation of his previous real estate license. In mitigation, the events that led to the revocation occurred in 1985. The conditions of the probation are that his license shall be on probation until his first renewal, and that, during the probationary period, any broker with whom he licenses must provide to the Division a written acknowledgment that the broker has been informed by Mr. Maynard about the revocation of his previous license and the fact that his new license has been issued on probationary status.

MCCLELLAN, RONALD L., Sales Agent, West Valley City. License issued on probation until first renewal because of past criminal history. Mr. McClellan will be required to notify any principal broker with whom he licenses during the probationary period about his past criminal history.

MCDUGALL, ASHLEY, Sales Agent, Kearns. License granted on probation until his first renewal because of past misdemeanor convictions.

MELTON, JASON, Sales Agent, formerly Wardley Better Homes & Gardens, Alta View branch. Agreed to pay a \$500 fine based on violating administrative rules by advertising a builder's homes for sale without written permission, having the buyer sign the document receipt on the REPC before all parties had signed the document, and breaching a fiduciary duty to his principals in the transaction by steering the buyers to his relative to apply for a loan. #RE96-10-08.

MILLER, PAMELA K., Sales Agent, West Jordan. Initial license application granted on probation because of a past criminal conviction.

The conditions of the probation are that her license shall be on probation until her first renewal and that, during the probationary period, she shall not accept or receipt any cash deposits from the parties to a real estate transaction.

MILLER, MARLYN, Principal Broker, Precept Property Management, Salt Lake City. Agreed to a 24-month suspension of her license beginning April 3, 2003, the issuance of a probationary sales agent license in its place, payment of a \$1,000 fine, and completion of the Division of Real Estate Trust Account Seminar, a real estate ethics course and a real estate financing course for: 1) failure to disclose to property management clients that she would charge an additional fee for arranging for and supervision of repairs to their property in violation of Utah Code Ann. §61-2-11; and 2) depositing client funds in an interest-bearing trust account in violation of Administrative Rule R162-4.2. #RE93-12-05. And RE96-07-14.

NELSON, RICHARD A., Principal Broker, Desert Mountain Properties, LLC, St. George. License renewed on the condition that it be suspended until such time as he satisfies a civil judgment against him based on misrepresentation in a real estate transaction in Fifth District Court in St. George, Case 990501127.

POPPE, RICHARD D.II, formerly principal broker of Fidelity Real Estate, Riverton. Agreed to pay a \$500 fine and complete the Trust Account Seminar and a Fundamentals of Real Estate Law course based on not handling a transaction as competently as it could have been handled, including the fact that he failed to fill out and present a REPC to his client, the seller, and instead had her sign a Uniform Real Estate Contract. The buyer could not qualify for financing, but Mr. Poppe maintains that because of the buyer's positive attitude and business plan to make additional money, he thought that seller financing with balloon payments would be a good option that would work for both buyers and seller. Mr. Poppe believed that his wife, who worked as a mortgage broker, would be able to assist the buyers in obtaining a "stated income" loan within the year following the signing of the contract. #RE98-10-05.

ROTHAAR, VICTOR, Sales Agent, Bountiful, Utah. License issued on probation until his first renewal because of past criminal conviction. During the period in which his license is on probation, Mr. Rothaar will be required to submit a written acknowledgment from any principal broker with whom he licenses that he has informed the principal broker about his past conviction.

Disciplinary Sanctions

continued from page 13

ROTTA, KIM M., Sales Agent, Discount Realty, Salt Lake City. License renewed on probation until her next renewal because of misdemeanor conviction.

SINCLAIR, JOHN C., Sales Agent, Bountiful. Initial license granted on probation because of past misdemeanor conviction. During the probation, which will last until his first renewal, he must disclose his past misdemeanor to all principal brokers with whom he licenses.

SORENSEN, JAY, Sales Agent, Salt Lake City. License surrendered effective December 18, 2002 because of a conviction of Third Degree Felony Theft in Case 011916490 in Third District Court in Salt Lake County. The theft was from First Security Bank while Mr. Sorenson was in the employ of that bank prior to his becoming a real estate agent. #RE02-01-04.

STEPHENSON, JAMES R., Sales Agent, St. George. License granted on probation because of past criminal history, with the license suspended until his criminal probation in the State of Arizona has been terminated. Once the Arizona probation has been terminated and Mr. Stephenson may affiliate his license with a principal broker, he will be required for the balance of his initial licensing term to submit a written acknowledgment from any principal broker with whom he licenses that he has informed the principal broker about his past criminal history.

TE, TONE, Sale Agent, RE/MAX Community, South Ogden, Utah. Agreed to pay a \$400 fine and complete the Division of Real Estate Trust Account Seminar and an agency course for breaching a fiduciary duty to his clients and violating Administrative Rule 162-6.2.15. While at a previous brokerage with which he was licensed, Te permitted his unlicensed personal assistant to show a home to his clients. #RE01-08-27.

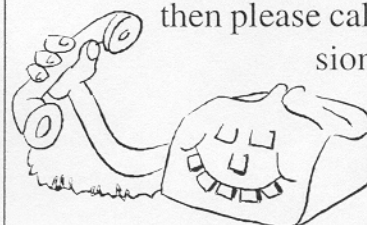
THOMPSON, BEVERLY J., Branch Broker, Coldwell Banker Tugaw Realtors, Tremonton. Agreed to pay a \$500 fine based on failure to exercise reasonable supervision over a licensee who filled out a REPC in March, 1997 that had an ambiguous settlement deadline, resulting in a dispute and a civil suit between the parties. The licensee acted as a limited agent in the transaction and, although she had consent from the sellers to act as a limited agent, she did not sign a buyer agency agreement with the buyer or obtain informed consent to limited agency. #RE97-07-15.

WILKERSON, JON J., Sales Agent, Western Land Realty, Inc., Duchesne. Agreed to have his license placed on probation for 12 months, pay a \$500 fine, and complete 3 additional hours of continuing education for violating an order of the Real Estate Commission. Mr. Wilkerson was ordered in case RE99-06-16 to pay a fine and complete additional continuing education hours by a specified deadline. Although the fine was timely paid, the continuing education was not timely completed. #RE02-06-06.

Seeking Answers? Consult Commission Rules, Newsletters, and Your Broker

The Division of Real Estate is anxious to serve the industry and to answer your questions. We are, however, as are all other state agencies, currently experiencing tight budgets and staffing constraints. We receive a high volume of calls every day from agents. Many of the questions are "FAQs" i.e., frequently asked questions that could be answered by looking in the Commission's administrative rules. They are available on the Division website, www.commerce.utah.gov/dre, under "About Us," then "Administrative Rules." Also, your broker can provide a wealth of information. He or she is responsible for your actions and needs to be supervising and training, so consult your broker as well. Current and former newsletters answer many questions too, on the website at "Services," then "Newsletters." If further clarification is required,

then please call the Division and we'll gladly help. Thanks for your understanding and cooperation.



Licensee's Interest in a Transaction

After lengthy discussion and a public hearing on this subject, the Real Estate Commission determined that not all wise business practices should be reduced to formalized rules. Accordingly, rules dealing with notification requirements for licensee's interest in personal transactions were recently simplified.

The elimination of Administrative Rules requiring disclosure of personal interest in transactions are not a signal that such conduct is condoned, encouraged, or even sanctioned. To the contrary, licensees who fail to represent their true ownership interests in personal transactions are much more likely to be involved in disputes and possible civil litigation with parties to real estate transactions.

The real estate industry has operated for many years with limited rules governing such disclosure. To this end it was agreed that licensees need, to a large extent, to monitor their own practices in this regard, rather than have Administrative Rules governing such practices. In this case the phrase "less is more" seems appropriate. The specific changes to these rules are included below. The essence of the change is to revert to the longstanding former rule, except that now any ownership interest must be disclosed, even an interest lower than 10%.

6.1.3. Licensee's Interest in a Transaction. A licensee shall not either directly or indirectly buy, sell, ~~[or]~~ lease or rent any real property as a principal, ~~[either directly or indirectly,]~~ without first disclosing in writing on the purchase agreement or the lease or rental agreement his true position as principal in the transaction. For the purposes of this rule, [A] a licensee will be considered to be a [principal for the purposes of this rule] "principal in the transaction" if he: a) is himself the buyer or the lessee in the transaction; b) has any ownership interest in the property; c) has any ownership interest in the entity that is the buyer, seller, lessor or lessee; or d) is an officer, director, partner, member, or employee of the entity that is the buyer, seller, lessor or lessee. [is an owner, officer, director, partner, member, or employee of an entity which is a principal in the transaction. In the case of a licensee who is a stockholder but who is not an officer, director or employee of a corporation which is a principal in the transaction, the licensee will be considered to be a principal for the purposes of this rule if he owns more than 10% of the stock of the corporation.

~~6.1.3.1 A licensee may not represent or attempt to represent a buyer in a transaction as a buyer's agent or as a limited agent if the licensee has an ownership interest, no matter how small, in a property which the buyer offers to purchase. A licensee may not represent or attempt to represent a buyer in a transaction as a buyer's agent or as a limited agent if the licensee is an officer, director, partner, member, employee, or stockholder of an entity that is the seller in the transaction.~~

~~6.1.3.2 A licensee may not represent or attempt to represent the seller in a transaction as a seller's agent or as a limited agent if: a) the licensee is the buyer in the transaction; b) the licensee has any ownership interest in an entity that is the buyer in the transaction; or c) the licensee is an officer, director, partner, member, employee, or stockholder of an entity that is the buyer in the transaction.~~

~~6.1.3.3 To avoid a potential breach of fiduciary duty or a conflict of interest, any existing listing agreement with the licensee's brokerage must be terminated prior to or at the time the licensee, or any entity in which the licensee is an officer, director, partner, member, employee, or stockholder, contracts to purchase the property that is the subject of the listing agreement.]~~ ❄ ❄ ❄

In Memoriam

The Division of Real Estate expresses condolences to the families of the following real estate licensees who have recently passed away:

Arloa Aplanalp	St. George
Fred D. Bond	Salt Lake City
Michael J. Brandt	Salt Lake City
Chris K. Chapman	St. George
Robert R. Connely	Murray
Trevor M. Cowan	Nephi
Jerry A. Duffin	Murray
Thomas E. Flinders	Malad City, ID
Calvin N. Hall	Sandy
Marjorie S. Harvey	Salt Lake City
Thomas C. Hawk	Salt Lake City
Keith L. Knight	Salt Lake City
Millie T. Lyle	Sandy
Eleana Marie Rice	Salt Lake City
John Smith Stringham	Provo
Rudy G. Vallee	Salt Lake City
Dick E. Willden	Paradise Valley, AZ